

RECEIPT NUMBER

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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

23pgs  
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FIDELITY AND DEPOSIT COMPANY  
OF MARYLAND in its own right and as  
subrogee and assignee of various  
obligees and claimants,

Plaintiff,

v.

A-MAC SALES AND BUILDERS COMPANY,  
a Michigan corporation, and ANDREW G.  
MCLEMORE and DOROTHY MCLEMORE,  
individually,

Defendant.

JUDGE : Zatkoff, Lawrence P.  
DECK : S. Division Civil Deck  
DATE : 07/16/2004 @ 14:24:16  
CASE NUMBER : 2:04CV72643  
CMP FIDELITY AND DEPOSIT CO V.  
A-MAC SALES (KC)

MAGISTRATE JUDGE R. STEVEN WHALEN

Mark M. Cunningham (P38408)  
**KERR, RUSSELL AND WEBER, PLC**  
Attorneys for Plaintiff  
500 Woodward Avenue, Suite 2500  
Detroit, MI 48226  
(313)961-0200

U.S. DIST. COURT  
EAST DIST. MICH.  
DETROIT-PSG

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FILED

COMPLAINT

**NOW COMES** Fidelity and Deposit Company of Maryland, in its own right and as subrogee and/or assignee of bond obligees and/or claimants (collectively "F & D"), by its attorneys, KERR, RUSSELL AND WEBER, PLC, and for its Complaint against A-Mac Sales and Builders Company ("A-Mac"), Andrew G. McLemore ("Andrew McLemore") and Dorothy McLemore, states as follows:

**COMMON ALLEGATIONS**

1. F & D is a Maryland insurance company organized and operating under the laws of the State of Maryland with its principal place of business in the State of Maryland.
2. Defendant A-Mac is a Michigan corporation organized under the laws of the

KERR, RUSSELL  
AND WEBER, PLC

State of Michigan and with its principal place of business in Wayne County, Michigan.

3. Defendant Andrew McLemore is an individual who is a citizen of the State of Michigan and at all times known to F & D resided and continues to reside in Wayne County, Michigan.

4. Defendant Dorothy McLemore is an individual who is a citizen of the State of Michigan and at all times known to F & D resided and continues to reside in Wayne County, Michigan.

5. This court has jurisdiction over this cause under 28 U.S.C. §1332(a)(1) because the matter in controversy, exclusive of interest and costs, exceeds the sum of \$75,000.00, and is between citizens of different states.

6. Venue is proper in this court because all Defendants reside in this District and the causes of action set forth herein arose in this District.

7. A-Mac entered into a construction contract (the "Contract") with the City of Detroit in the State of Michigan for the construction of a project known as the Jeffries West Apartments Building 502 – Modernization-Reconfiguration (the "Project").

8. In connection with the Project, A-Mac was required, by the Contract and by the laws of the State of Michigan, in particular, MCLA §129.201 *et seq.* to provide payment and performance bonds issued by a surety authorized and qualified to do business in the State of Michigan.

9. In connection with the Project, A-Mac applied to and requested from F & D payment and performance bonds in the nature and amount required by the Contract and the statutes of the State of Michigan.

10. In reliance upon an Agreement of Indemnity ("Indemnity Agreement")

(Exhibit A) executed by Andrew McLemore and Dorothy McLemore (sometimes collectively referred to as the "Indemnitors"), F & D, as surety, executed Payment and Performance Bond Nos. 6117787 (the "Bonds") in connection with the Project, copies of which are in the possession of Defendants.

11. The existence and execution of the Indemnity Agreement was a condition precedent to F & D's agreement to issue the Bonds.

12. Before it was able to complete the Project, A-Mac became unable to perform or complete the performance of the work or comply with its contractual obligations on the Project; became in default under the Contract for the Project; was unable to pay certain subcontractors and suppliers of labor and/or materials in connection with the Contract and the Project; and its Contract for the Project was terminated for cause by the owner of the Project.

13. The Indemnity Agreement requires the Indemnitors to indemnify and hold F & D harmless from, among other things, all liability under the Bonds F & D issued on behalf of A-Mac. The Indemnity Agreement provides, in part, the following:

#### **Indemnity**

Second: The Contractor and Indemnitors shall exonerate, indemnify and keep indemnified the Surety from and against any and all liability for losses and/or expenses of whatsoever kind or nature (including, but not limited to, interests, court costs, and counsel fees) and from and against any and all such losses and/or expenses which the Surety may sustain and incur: (1) by reason of having executed or procured the execution of the Bonds, (2) by reason of the failure of the Contractor or Indemnitors to perform or comply with the covenants and conditions of this Agreement, or (3) in enforcing any of the covenants and conditions of this Agreement. Payment by reason of the aforesaid causes shall be made to the surety by the Contractor and Indemnitors as soon as liability exists or is asserted against the Surety, whether or not the Surety shall have made any payment therefore. Such payment

shall be equal to the amount of the reserve set by the Surety. In the event of any payment by the Surety the Contractor and Indemnitors further agree that in any accounting between the Surety and Contractor, or between the Surety and the Indemnitors, or either or both of them, the Surety shall be entitled to charge for any and all disbursements made by it in good faith in and about the matters herein contemplated by this Agreement under the belief that it is or was liable for the sums and amounts so disbursed, or that it was necessary or expedient to make such disbursements, whether or not such liability, necessity or expediency existed; and that the vouchers or other evidence of any such payments made by the Surety shall be prima facie evidence of the fact and amount of the liability to the Surety.

(Exhibit A.)

14. The Indemnity Agreement also required the Indemnitors to post collateral upon F & D's demand. (Exhibit A).

15. Based upon A-Mac's default in connection with the Contract and the Project, as well as the Bonds, and A-Mac's failure to pay subcontractors and/or suppliers in connection with the Project constituting a further default in connection with the Contract, the Project and the Bonds, to date, F & D has been required to make the following payments:

A. Payments to complete the work required by the Contract: \$2,457,662.00.

B. Payments to subcontractors and/or suppliers of A-Mac:

Progressive Mechanical, Inc. \$262,915.69

Partlan-Labadie Sheet Metal Co. \$37,700.00

Di-Mar, Inc. \$190,636.89

CSA Electric, Inc. \$110,995.20

Scaffolding, Inc. \$14,700.00

These sums do not include engineering and legal fees, investigation expenses, travel

expenses and other expenses resulting from and arising out of the default of A-Mac, all of which exceed \$100,000.00.

16. As a result of receipt of certain remaining Contract balances, F & D has received the sum of \$2,276,949.00 which it has applied to the losses caused by Indemnitors.

17. F & D has made demand upon the Indemnitors for payment of the sums incurred by F & D but the Indemnitors have wholly failed and refused to indemnify and hold F & D harmless.

18. F & D has also been subrogated to the rights of all those whom ht has paid, as more fully set forth in paragraph 15.

**COUNT I  
(BREACH OF CONTRACT)**

19. F & D incorporates by reference paragraphs 1 through 18 as though fully set forth here.

20. Pursuant to the Indemnity Agreement, Indemnitors are obligated to indemnify F & D from all losses, costs, damages, attorneys fees, disbursements and expenses of every nature and to post collateral to cover F & D's Bond losses.

21. Despite F & D's demand, the Indemnitors have breached the Indemnity Agreement by failing and refusing to indemnify and hold F & D harmless and failing to post collateral sufficient to protect F & D from losses which have already occurred and contingent bond exposure.

22. F & D has been damaged by the Indemnitors' material breach of the Indemnity Agreement in an amount in excess of \$880,000.00.

WHEREFORE, Fidelity and Deposit Company of Maryland prays that this court

enter a judgment in favor of F & D and against A-Mac, Andrew McLemore and Dorothy McLemore, jointly and severally, in an amount in excess of \$880,000.00, together with interest, costs, expenses and attorneys fees, and grant such other and further relief as this court deems just and equitable.

**COUNT II  
(EXONERATION AND REIMBURSEMENT)**

23. F & D incorporates by reference the common allegations set forth in paragraphs 1 through 18 as though fully set forth here.

24. F & D has demanded that the Indemnitors indemnify and hold it harmless from the claims paid and costs incurred by F & D in connection with the issuance of the Bonds in an amount in excess of \$880,000.00.

25. As the principal on the Performance and Payment Bonds, A-Mac owes F & D the duty of exoneration and reimbursement. Additionally, the Indemnity Agreement requires all of the Indemnitors to place funds or other security with F & D upon demand in an amount sufficient to cover F & D's bond exposure and/or loss.

26. The Indemnitors have failed and refused to meet their obligations under the Indemnity Agreement by failing to indemnify F & D from the losses and to post collateral in an amount sufficient to secure F & D from loss.

27. F & D is entitled to be reimbursed, including for its attorneys and consulting fees as well as all other expenses incurred in connection with and as a result of having issued the Bonds and to be fully collateralized by the Indemnitors. Unless the injunctive relief requested in Count IV below is granted, the Indemnitors are likely to sell, transfer, dispose, lien, secure, or otherwise encumber their assets from being used to discharge the Indemnitors' obligations to exonerate and indemnify F & D, all to F & D's irreparable

harm.

28. F & D lacks an adequate remedy at law to secure its rights of reimbursement and exoneration from the Indemnitors and is without a plain, speedy remedy at law and will be irreparably and permanently injured unless this court grants the injunctive and equitable relief requested herein.

WHEREFORE, Fidelity and Deposit Company of Maryland prays this court enter an order providing judgment against A-Mac, Andrew McLemore and Dorothy McLemore, jointly and severally, in an amount in excess of \$880,000.00, together with costs, expenses and attorneys' fees and require all of the foregoing Defendants to post collateral in the amount of \$880,000.00 or in an amount sufficient to secure F & D from any losses (which have been incurred or which may be incurred), including an amount sufficient to reimburse F & D for interest, costs and attorneys fees, together with such other relief as this court deems just and equitable.

**COUNT III**  
**(SPECIFIC PERFORMANCE OF THE INDEMNITY AGREEMENT)**

29. F & D incorporates by reference the common allegations set forth in paragraphs 1 through 18 as though fully set forth here.

30. F & D has demanded that the Indemnitors indemnify and hold F & D harmless from any and all costs, losses and expenses resulting from the issuance of Bonds for the Project. To date, the Indemnitors have failed to indemnify and hold F & D harmless.

31. F & D lacks an adequate remedy at law and will suffer irreparable harm if the relief sought is not granted.

WHEREFORE, Fidelity and Deposit Company of Maryland prays this court enter

judgment in its favor and against A-Mac, Andrew McLemore and Dorothy McLemore, jointly and severally, in an amount in excess of \$880,000.00, together with interest, costs and attorneys fees and further enter an order requiring the Indemnitors to post collateral in the initial amount of \$880,000.00 or in an amount sufficient to secure F & D from any losses, together with such other relief as this court deems just and equitable.

**COUNT IV  
INJUNCTIVE RELIEF**

32. F & D incorporates by reference the common allegations set forth in paragraphs 1 through 18 as though fully set forth here.

33. By the express provisions of the Indemnity Agreement and by virtue of the equitable doctrines of exoneration and reimbursement, F & D is entitled to have the Indemnitors place funds or other security with it upon demand that are sufficient to cover the above-described Bond losses and expenses, as well as to provide protection against potential losses. (Exhibit A).

34. Unless injunctive relief is granted, F & D will suffer immediate and irreparable harm in that the Defendants' past conduct demonstrates a willingness and likelihood on their part to avoid their obligations.

35. Unless injunctive relief is granted, F & D will not be adequately secured for its obligations and/or losses under the Bonds.

WHEREFORE, F & D respectfully requests that this court grant the following temporary relief and thereafter the preliminary relief requested below:



**Preliminary Injunction**

1. An Order requiring Defendants to provide F & D a full and complete accounting of all assets owned by them or in which they have an interest;
2. An Order requiring Defendants to allow F & D and/or its agents full and complete access to all financial books, records and accounts maintained by them;
3. An Order requiring Defendants to place with F & D the initial amount of \$880,000.00 in funds by money, property, or liens or security interests in property, and any additional amount as determined by F & D as security for its obligations and losses under the Bonds;
4. An Order granting a lien upon all assets and property, including, realty and personalty owned by Defendants and property in which any one or more of the Defendants have an interest, including, without limitation, all interests in bonds, securities, companies, and other investments. F & D requests that such lien remain in effect unless and until F & D shall receive the funds requested in paragraph 3 above;
5. An Order requiring Defendants to indemnify, exonerate and reimburse F & D for all liabilities, losses and expenses incurred by F & D as a result of F & D having executed the Bonds;
6. An Order granting F & D judgment for all costs, including attorneys and consultant fees incurred as a result of having issued the Bonds, together with an award of interest on all amounts paid by F & D to date;
7. Such other relief as this court deems just and equitable.

**COUNT V  
(DECLARATORY JUDGMENT)**

36. F & D incorporates by reference the common allegations set forth in paragraphs 1 through 18 as though fully set forth here.

37. Indemnitors are obligated to indemnify F & D from all losses, costs, damages, attorneys fees, disbursements and expenses of every nature pursuant to the Indemnity Agreement and to post collateral to cover F & D's bond exposure and future

expenses.

38. Under the Indemnity Agreement, F & D is entitled to settle or compromise any claim, liability, demand, suit or judgment on any Bond issued on behalf of A-Mac and such settlement or compromise shall be binding upon the Indemnitors. Any vouchers or other evidence of payment by F & D is prima facie evidence of the fact and amount of liability of the Indemnitors. (Exhibit A).

39. The Indemnitors have breached their obligations under the GAI by failing and refusing to indemnify and hold F & D harmless from A-Mac's defaults and failing to reimburse F & D and post collateral.

40. 28 U.S.C. §2201 provides that the court may make binding declarations of rights in cases of actual controversy.

41. The instant cause involves an actual controversy regarding the obligations of the Defendants under the Indemnity Agreement and it is thus appropriate that this court issue a declaratory judgment regarding the parties' respective rights and obligations under the Indemnity Agreement and because a binding declaration by this court as to each party's rights and obligation under the Indemnity Agreement would serve to terminate any question of who is obligated to indemnify F & D.

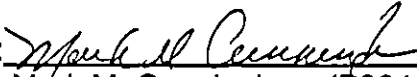
WHEREFORE, Fidelity and Deposit Company of Maryland respectfully requests that this court grant the following relief:

- A. Enter an order declaring that Defendants A-Mac, Andrew McLemore and Dorothy McLemore, jointly and severally, are liable to F & D under the Indemnity Agreement for all losses F & D incurs or has incurred as a result of the issuance of the Bonds for A-Mac;
- B. Enter an order declaring that pursuant to the terms of the Indemnity Agreement, F & D has the following rights:

KERR, RUSSELL  
AND WEBER, PLC

1. F & D has the right to settle or compromise any claim, liability, demand, suit or judgment upon the Bonds at issue and such settlement or compromise shall be binding on the Indemnitors. The vouchers or other evidence of payment shall be prima facie evidence of the fact and amount of the Indemnitors' liability;
2. The Indemnitors are obligated to reimburse F & D a sum in excess of \$880,000.00, together with all interest, costs and attorneys fees and consultant fees incurred by F & D to date in connection with the Bonds;
3. The Indemnitors are obligated to post collateral in the above amount, \$880,000.00.

**KERR, RUSSELL AND WEBER, PLC**

By:   
Mark M. Cunningham (B38408)  
Attorneys for Plaintiff  
500 Woodward Ave., Ste. 2500  
Detroit, MI 48226  
(313) 961-0200

Dated: July 16, 2004

KERR, RUSSELL  
AND WEBER, PLC

A

FIDELITY &amp; DEPOSIT

TEL: 414-276-9543

Aug 05 97 11:47 No.012 P.07

## Agreement of Indemnity

1 This AGREEMENT of Indemnity, made and entered into this 21st day of  
 2 November, 1994, by A-FMC SALES & MARKETING CO., INC.,  
 3 15780 Schaefer, Detroit, MI 48227 (hereinafter called the Contractor) and  
 4 Andrew G. & Dorothy McInnes, both of 5448 West Outer Drive, Detroit, MI 48235  
 5 (hereinafter called the Indemnitors, if any) and  
 6 FIDELITY AND DEPOSIT COMPANY OF MARYLAND, 300 East Paul Place, P.O. Box 1237, Baltimore, Maryland 21201, its suc-  
 7 cessors and assigns (hereinafter called Surety),

## WITNESSETH:

9 Whereas, the Contractor, in the performance of contracts and the fulfillment of obligations generally, whether in its own  
 10 name solely or as co-contractor with others, may desire or be required to give or procure certain surety bonds, undertakings  
 11 or instruments of guarantee, and to secure, or continue or substitute from time to time the same or new bonds, undertakings  
 12 or instruments of guarantee with the same or different penalties, and/or conditions, any one or more of which are hereinafter  
 13 called Bonds; or the Contractor or Indemnitors may require the Surety to refrain from cancelling said Bonds; and  
 14 Whereas, at the request of the Contractor and the Indemnitors and upon the express understanding that this Agreement  
 15 of Indemnity is given, the Surety has consented or prepared to be assigned, and may from time to time hereafter consent or  
 16 prepare to be assigned, said Bonds on behalf of the Contractor; and  
 17 Whereas, the Indemnitors have a commercial, material and beneficial interest in the obtaining of the Bonds or in the  
 18 Surety's refraining from cancelling said Bonds;  
 19 Now, Therefore, in consideration of the premises the Contractor and Indemnitors for themselves, their heirs, executors,  
 20 administrators, successors and assigns, jointly and severally, hereby covenant and agree with the Surety, as follows:

## PREMIUMS

21 FIRST: The Contractor and Indemnitors will pay to the Surety in each annum as may be agreed upon all premiums and  
 22 charges of the Surety for the Bonds in accordance with its rate flags, in annual or other, or as otherwise agreed upon, until  
 23 the Contractor or Indemnitors shall serve evidence satisfactory to the Surety of its discharge or release from the Bonds and  
 24 all liability by reason thereof.

## INDEMNITY

25 SECOND: The Contractor and Indemnitors shall covenants, indemnify, and keep indemnified the Surety from and against  
 26 any and all liability for losses and/or expenses of whatsoever kind or amount (including, but not limited to, attorneys' fees, court costs  
 27 and counsel fees) and from and against any and all such losses and/or expenses which the Surety may sustain or incur; (1)  
 28 By reason of having executed or procured the execution of the Bonds; (2) By reason of the failure of the Contractor or Indem-  
 29 nitors to perform or comply with the covenants and conditions of this Agreement or (3) In enforcing any of the covenants and  
 30 conditions of this Agreement. Payment by reason of the aforesaid events shall be made to the Surety by the Contractor and Indem-  
 31 nitors as soon as liability exists or is asserted against the Surety, whether or not the Surety shall have made any payment therefor.  
 32 Such payment shall be equal to the amount of the recovery set by the Surety. In the event of any payment by the Surety the  
 33 Contractor and Indemnitors further agree that in any proceeding between the Surety and Contractor, or between the Surety and  
 34 the Indemnitors, or either or both of them, the Surety shall be entitled to charge for any and all disbursements made by it in  
 35 good faith in and about the matters herein contemplated by this Agreement under the belief that it is or was liable for the same  
 36 and amounts so disbursed, or that it was reasonably or equitably so made such disbursements, whether or not such liability,  
 37 necessity or expediency existed; and that the vouchers or other evidence of any such payments made by the Surety shall be  
 38 prima facie evidence of the fact and amount of the liability to the Surety.

## ASSIGNMENT

39 THIRD: The Contractor, the Indemnitors hereby conveying, with assigns, transfer and on over, and then hereby assign, transfer  
 40 and on over to the Surety, as collateral, to secure the obligations in any and all of the paragraphs of this Agreement and  
 41 any other indebtedness and liabilities of the Contractor to the Surety, whether herebefore or hereafter, incurred, the assignment  
 42 in the form of each contract to become effective as of the date of the final covering each contract, but only in the event of  
 43 (1) any abandonment, forfeiture or breach of any contract referred to in the Bonds or of any branch of any such bonds; or  
 44 (2) of any breach of the provisions of any of the paragraphs of this Agreement; or (3) of a default in satisfying with other  
 45 instruments or liabilities when due; or (4) of any assignment by the Contractor for the benefit of creditors, or of the  
 46 appointment, or of any application for the appointment, of a receiver or trustee for the Contractor whether insolvent or not;  
 47 or (5) of any proceeding which deprives the Contractor of the use of any of the machinery, equipment, plant, tools or material  
 48 referred to in section (b) of this paragraph; or (6) of the Contractor's dying, absconding, disappearing, insolvency,  
 49 being convicted of a felony, or imprisoned if the Contractor be an individual; (a) All the rights of the Contractor in, and  
 50 growing in any manner out of, all contracts referred to in the Bonds, or in, or growing in any manner out of the Bonds;  
 51 (b) All the rights, title and interest of the Contractor in and to all machinery, equipment, plant, tools and materials which  
 52 are now, or may hereafter be, shown or upon the site or sites of any and all of the governmental work referred to in the Bonds  
 53 or elsewhere, including materials purchased for or chargeable to any and all contracts referred to in the Bonds, materials which  
 54 may be in process of construction, in storage elsewhere, or in transportation to any and all of said sites; (c) All the rights,  
 55 title and interest of the Contractor in and to all subcontracts let or to be let in connection with any and all contracts referred  
 56 to in the Bonds, and in and to all surety bonds supporting such subcontracts; (d) All actions, claims, demands and  
 57 whatsoever which the Contractor may have or acquire against any subcontractor, laborer or manufacturer, or any person  
 58 furnishing or agreeing to furnish or supply labor, material, supplies, machinery, tools or other equipment in connection with  
 59 or on account of any and all contracts referred to in the Bonds; and against any carrier or carrier of any subcontractor, laborer,  
 60 or manufacturer; (e) Any and all percentages retained and any and all sums that may be due or hereafter become due on  
 61 account of any and all contracts referred to in the Bonds and all other contracts whether bonded or not in which the  
 62 Contractor has an interest.

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## TRUST FUND

FOURTH: If any of the Bonds are assigned in connection with a contract which by its terms or by law prohibits the assignment of the contract price, or any part thereof, the Contractor and Indemnitors consent and agree that all payments received for or on account of said contract shall be held as a trust fund in which the Surety has an interest, for the payment of obligations incurred in the performance of the contract and for labor, materials, and services furnished in the prosecution of the work provided in said contract or any authorized extension or modification thereof; and, further, it is expressly understood and declared that all moneys due and to become due under any contract or contracts covered by the Bonds are trust funds, whether in the possession of the Contractor or Indemnitors or otherwise, for the benefit of and for payment of all such obligations in connection with any such contract or contracts for which the Surety would be liable under any of said Bonds, which said trust also inures to the benefit of the Surety for any liability or loss it may have or sustain under any said Bonds, and this Agreement and declaration shall also constitute notice of such trust.

## UNIFORM COMMERCIAL CODE

FIFTH: That this Agreement shall constitute a Surety Agreement as the Surety and then a Financing Agreement, both in accordance with the provisions of the Uniform Commercial Code of every jurisdiction wherein such Code is in effect and may be so used by the Surety without in any way derogating, restricting or limiting the rights of the Surety under this Agreement or under law, or in equity.

## TAKEOVER

SIXTH: In the event of any breach or default covered by the obligee in any said Bonds, or the Contractor has abandoned the work on or forfeited any contract or contracts covered by any said Bonds, or has failed to pay obligations incurred in connection therewith, or in the event of the death, disappearance, Contractor's conviction for a felony, imprisonment, incompetency, insanity, or bankruptcy of the Contractor, or the appointment of a receiver or trustee for the Contractor, or of the property of the Contractor, or in the event of an assignment for the benefit of creditors of the Contractor, or if any action is taken by or against the Contractor or any of its subsidiaries, or by virtue of the National Bankruptcy Act, or should reorganization or arrangement proceedings be filed by or against the Contractor under said Act, or if any action is taken by or against the Contractor under the involuntary laws of any state, jurisdiction, or territory of the United States the Surety shall have the right, at its option and in its sole discretion and to hereby authorize, with or without exercising any other right or option rendered upon it by law or in the terms of this Agreement, to take possession of any part or all of the work under any contract or contracts covered by any said Bonds, and at the request of the Contractor and Indemnitors to complete or arrange for the completion of the same, and the Contractor and Indemnitors shall promptly upon demand pay to the Surety all losses, and expenses so incurred.

## CHANGES

SEVENTH: The Surety is authorized and empowered, without notice to or knowledge of the Indemnitors to consent to any change whatsoever in the Bonds, and/or any contract referred to in the Bonds, and/or in the general conditions, plans and/or specifications accompanying said contracts, including, but not limited to, any change in the time for the completion of said contracts and to payments or advances thereunder before the same may be due, and to consent to or take any assignment or assignments, to execute or represent to the execution of any continuation, extension or renewal of the Bonds and to execute any additions or reductions thereto, with the same or different conditions, provisions and obligations and with the same or larger or smaller penalties, it being expressly understood and agreed that the Indemnitors shall release the Surety under the terms of this Agreement even though any such action by the Surety does or might substantially increase the liability of said Indemnitors.

## ADVANCES

EIGHTH: The Surety is authorized and empowered to advance loans, to advance or lend to the Contractor any money, which the Surety may see fit, for the purpose of any contracts referred to in the Bonds; and all money expended in the completion of any such contracts by the Surety, or loan or advance from time to time to the Contractor, or guaranteed by the Surety for the payment of any such contracts, and all costs, and expenses incurred by the Surety in relation thereto, unless repaid with legal interest by the Contractor to the Surety when due, shall be presumed to be a loan by the Surety for which the Contractor and the Indemnitors shall be responsible, notwithstanding that said money or any part thereof should not be used by the Contractor.

## BOOKS AND RECORDS

NINTH: At any time, and until such time as the liability of the Surety under any and all said Bonds is terminated, the Surety shall have the right to reasonable access to the books, records, and accounts of the Contractor, and Indemnitors, and any bank depository, commission, supply house, or other person, firm, or corporation which is connected with the Surety in having performed for the Surety any indemnification agreement including, but not limited to, the status of the work under contracts being performed by the Contractor, the conditions of the performance of such contracts and payments of accounts.

## DECLINE EXECUTION

TENTH: Unless otherwise specifically agreed in writing, the Surety may decline to execute any Bond and the Contractor and Indemnitors agree to make no claim on the Surety in consideration of the Surety's remaining this Agreement; and if the Surety shall execute a Bid or Proposal Bond, it shall have the right to decline to execute any and all of the Bonds that may be required in connection with any award that may be made under the proposal for which the Bid or Proposal Bond is given and such declination shall not diminish or alter the liability that may arise by reason of having executed the Bid or Proposal Bond.

## NOTICE OF EXECUTION

ELEVENTH: The Indemnitors hereby waive notice of the execution of said Bonds and of the breach of the Agreement, and the Contractor and the Indemnitors hereby waive all notice of any default, or any other act or act giving rise to any claim under said Bonds, as well as notice of any and all liability of the Surety under said Bonds, and any and all liability on their part hereunder, in the end and effect that, the Contractor and the Indemnitors shall be and continue liable hereunder, notwithstanding any notice of any kind in which they might have been or be entitled, and notwithstanding any defense they might have been entitled to make.

## WOMESTEAD

TWELFTH: The Contractor and the Indemnitors hereby waive, so far as their respective obligations under this Agreement are concerned, all rights to claim any of their property, including their respective homesteads, as exempt from levy, execution, sale or other legal process under the laws of any State, Territory, or Possession.

## SETTLEMENTS

THIRTEENTH: The Surety shall have the right to adjust, settle or compromise any claim, demand, suit or judgment upon the Bonds, unless the Contractor and the Indemnitors shall request the Surety to litigate such claim or demand, or to defend such suit, or to appeal from such judgment, and shall deposit with the Surety, at the time of such request, cash or collateral satisfactory to the Surety in kind and amount, to be used in paying any judgment or judgment rendered or that may be rendered, with interest, costs, expenses and attorney's fees, including those of the Surety.

FIDELITY & DEPOSIT

TEL: 414-276-9543

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SUMMARY

FOURTH: In the event the Surety procures the execution of the Bonds by other means or executes the Bonds with co-sureties, or releases any portion of said Bonds with releasing sureties, then all the terms and conditions of this Agreement shall inure to the benefit of such other sureties, co-sureties and releasing sureties, at their interest they appear.

SUITS

FIFTH: Separate suits may be brought hereunder as causes of action occur, and the bringing of suit or the recovery of judgment upon any cause of action shall not preclude or bar the bringing of other suits, upon other causes of action, whether theretofore or thereafter arising.

OTHER PROVISIONS

SIXTH: That the Contractor and the Indemnitors shall continue to remain bound under the terms of this Agreement even though the Surety may have from time to time herebefore or hereafter, with or without notice to or knowledge of the Contractor and the Indemnitors, assigned or released other agencies of indemnity or otherwise in connection with the execution or performance of said Bonds, where the Contractor or Indemnitors or others, in being so bound, understand and agreed by the Contractor and the Indemnitors that any and all other rights which the Surety may have or acquire against the Contractor and the Indemnitors under any such other or additional agreements of indemnity or collateral shall be in addition to, and not in lieu of, the rights afforded the Surety under this Agreement.

INVALIDITY

SEVENTH: In case any of the parties mentioned in this Agreement fail to execute the same, or in case the execution thereof by any of the parties be defective or invalid for any reason, such failure, defect or invalidity shall not in any manner affect the validity of this Agreement or the liability hereunder of any of the parties assuming the same, and each and every party so assuming shall be and remain fully bound and liable hereunder to the same extent as if such failure, defect or invalidity had not existed. It is understood and agreed by the Contractor and Indemnitors that the rights, powers, and remedies given the Surety under this Agreement shall be and are in addition to, and not in lieu of, any and all other rights, powers, and remedies which the Surety may have or acquire against the Contractor and Indemnitors or others whether by the terms of any other agreement or by operation of law or otherwise.

ATTORNEY IN FACT

EIGHTH: The Contractor and Indemnitors hereby irrevocably nominate, designate, appoint and designate the Surety as their attorney-in-fact with the right, but not the obligation, to exercise all of the rights of the Contractor and Indemnitors assigned, transferred and set over to the Surety in this Agreement, and in the name of the Contractor and Indemnitors to make, execute, and deliver any and all additional or other assignments, documents or papers deemed necessary and proper by the Surety in order to give full effect and carry out the intent and meaning of the within obligations, but also to the full protection intended to be herein given to the Surety under all other provisions of this Agreement. The Contractor and Indemnitors hereby certify and confirm all acts and actions taken and done by the Surety as such attorney-in-fact.

TERMINATION

NINTH: This Agreement may be terminated by the Contractor or Indemnitors upon twenty days' written notice sent by registered mail to the Surety at its home office at 300 Saint Paul Place, Baltimore, Maryland 21202. Attention: Van Praeger, Surety Department, but any such notice of termination shall not operate to modify, bar, or discharge the Contractor or the Indemnitors as to the Bonds that may have been previously issued.

TENTH: This Agreement may not be changed or modified orally. No change or modification shall be effective unless made by written endorsement executed to form a part hereof.

ELEVENTH:

IN WITNESS WHEREOF, we have signed and sealed the day and year first above written.

ATTEST OR WITNESS:

*Dorothy H. Moore*  
Dorothy H. Moore - Secretary

*Kenneth C. P.*

*Mary G. Green*

A-MEC SALES & BUILDERS CO., INC.

Full Name and Address of Secretary

15780 Schaefer Detroit, MI 48227

By: *[Signature]* (Sign)

INDENTURED President

*[Signature]* (Seal)

Full Name and Address of Secretary

Andrew G. McLaughlin - Detroit, Michigan

*[Signature]* (Seal)

Full Name and Address of Secretary

Dorothy H. Moore - Detroit, Michigan

*[Signature]* (Seal)

Full Name and Address of Secretary

Full Name and Address of Secretary

Full Name and Address of Secretary

Full Name and Address of Secretary

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Full Name and Address of Secretary

Full Name and Address of Secretary

FIDELITY AND DEPOSIT COMPANY OF MARYLAND

By: *[Signature]* (Seal)

Full Name and Address of Secretary

Full Name and Address of Secretary

Full Name and Address of Secretary

Full Name and Address of Secretary

Full Name and Address of Secretary

Full Name and Address of Secretary

Full Name and Address of Secretary

Full Name and Address of Secretary

Full Name and Address of Secretary

Full Name and Address of Secretary

Full Name and Address of Secretary

Full Name and Address of Secretary

FIDELITY &amp; DEPOSIT

TEL: 414-276-9543

Aug 05 97 11:49 No.012 P.10

For Ackr: Indemnity of Contractor's Signature

## INDIVIDUAL ACKNOWLEDGMENT

STATE OF \_\_\_\_\_  
 COUNTY OF \_\_\_\_\_  
 On this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, before me, the undersigned, personally appeared \_\_\_\_\_

to me personally known, and known by me to be the person described in, and who executed, the foregoing instrument and acknowledged to me that he executed the same as and for the act and deed of said \_\_\_\_\_.

My Commission Expires \_\_\_\_\_ (Notary Public)

## PARTNERSHIP ACKNOWLEDGMENT

STATE OF \_\_\_\_\_  
 COUNTY OF \_\_\_\_\_  
 On this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, before me, personally appeared \_\_\_\_\_

a member of the partnership of \_\_\_\_\_, to me personally known, and known by me to be the person who is described in and who executed the foregoing instrument, and acknowledged to me that he executed the same as and for the act and deed of the said partnership.

My Commission Expires \_\_\_\_\_ (Notary Public)

## CORPORATE ACKNOWLEDGMENT

STATE OF \_\_\_\_\_  
 COUNTY OF \_\_\_\_\_  
 On this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, before me, the undersigned, personally appeared \_\_\_\_\_

known here name of officer who signs for the corporation \_\_\_\_\_, to me personally known, and known by me to be the person who is described in and who executed the foregoing instrument, and acknowledged to me that he executed the same as and for the act and deed of the said corporation. \_\_\_\_\_  
 I, \_\_\_\_\_, Secretary of said corporation, do hereby certify that \_\_\_\_\_ is the President of the corporation described in, and which executed, the whole instrument; that he knows the contents of said instrument and that it was executed by order of the Board of Directors of said corporation, and that he signed his name thereto by the order; and the document further said that he is acquainted with \_\_\_\_\_ and knows that he is the Secretary of said corporation.

\_\_\_\_\_ (Notary Public)

My Commission Expires \_\_\_\_\_

## For Acknowledgment of Indemnitor's Signature

## INDIVIDUAL ACKNOWLEDGMENT

STATE OF \_\_\_\_\_  
 COUNTY OF \_\_\_\_\_  
 On this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, before me, the undersigned, personally appeared \_\_\_\_\_

to me personally known, and known by me to be the person described in, and who executed, the foregoing instrument and acknowledged to me that he executed the same as and for the act and deed of said \_\_\_\_\_.

My Commission Expires \_\_\_\_\_ (Notary Public)

## INDIVIDUAL ACKNOWLEDGMENT

STATE OF \_\_\_\_\_  
 COUNTY OF \_\_\_\_\_  
 On this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, before me, the undersigned, personally appeared \_\_\_\_\_

to me personally known, and known by me to be the person described in, and who executed, the foregoing instrument and acknowledged to me that he executed the same as and for the act and deed of said \_\_\_\_\_.

My Commission Expires \_\_\_\_\_ (Notary Public)

## PARTNERSHIP ACKNOWLEDGMENT

STATE OF \_\_\_\_\_  
 COUNTY OF \_\_\_\_\_  
 On this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, before me, personally appeared \_\_\_\_\_

a member of the partnership of \_\_\_\_\_, to me personally known, and known by me to be the person who is described in and who executed the foregoing instrument, and acknowledged to me that he executed the same as and for the act and deed of the said partnership.

My Commission Expires \_\_\_\_\_ (Notary Public)

## CORPORATE ACKNOWLEDGMENT

STATE OF \_\_\_\_\_  
 COUNTY OF \_\_\_\_\_  
 On this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, before me, the undersigned, personally appeared \_\_\_\_\_

known here name of officer who signs for the corporation \_\_\_\_\_, to me personally known, and known by me to be the person who is described in and who executed the foregoing instrument, and acknowledged to me that he executed the same as and for the act and deed of the said corporation. \_\_\_\_\_

I, \_\_\_\_\_, Secretary of said corporation, do hereby certify that \_\_\_\_\_ is the President of the corporation described in, and which executed, the whole instrument; that he knows the contents of said instrument and that it was executed by order of the Board of Directors of said corporation, and that he signed his name thereto by the order; and the document further said that he is acquainted with \_\_\_\_\_ and knows that he is the Secretary of said corporation.

\_\_\_\_\_ (Notary Public)

My Commission Expires \_\_\_\_\_



B

CITY OF DETROIT  
HOUSING COMMISSION1301 E. JEFFERSON  
DETROIT, MICHIGAN 48207

September 15, 2000

Via facsimile transmission to (313) 965-1508  
and Certified Mail No. \_\_\_\_\_, Return Receipt Requested

Andrew G. McLemore, Sr.  
A-MAC Sales & Builders Company, Inc.  
1528 Woodward  
Detroit, MI 48226

Re: Detroit Housing Commission ("DHC") Contract No. 1653 (the "Contract")  
Unit Reconfiguration and Renovations at Jeffries West Apartments, Bldg. 502 (the "Project")

Dear Mr. McLemore:

This letter, drafted in accordance with Article 14 of the DHC General Conditions for the above referenced construction contract, constitutes formal written declaration and Notice of DHC's termination of the above referenced Contract. As stated in our letter to you dated August 21, 2000, said termination is for cause, due to the failure of A-Mac Sales & Builders Co., Inc. ("A-Mac") to complete contract work within the corresponding contract time specified for completion of performance.

The effective date of said termination is September 8, 2000, the date specified in our letter dated August 21, 2000 by which we gave you written notice of DHC's intent to terminate the Contract absent timely submission of an acceptable Plan for resumption of work and completion of the Project. We have reviewed your letter dated September 7, 2000, along with the enclosures thereto, and find it unacceptable and insufficient as a basis upon which we can justify postponing or setting aside our decision to proceed with contract termination. It does not give DHC reasonable and credible assurance that A-Mac has the present capacity and intent to complete the Project.

By separate letter dated this same date, a copy of which is enclosed, we are advising the Surety that issued Performance and Payment Bond Number 6117787 for this Project, Fidelity & Deposit Company of Maryland ("Fidelity"), of our action. We are demanding that Fidelity honor its obligation under its Performance Bond and proceed promptly to prosecute the work to completion. Please note that the deadline established for submission by Fidelity of an acceptable Plan for completion of the Project is October 2, 2000, calculated with reference to §14.3.1.1 of the DHC General Conditions of the Contract.

DENNIS W. ARCHER, MAYOR

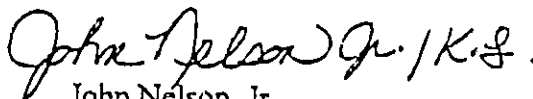
Andrew G. McLemore, Sr.  
September 15, 2000  
Page 2

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By this termination letter A-Mac is hereby instructed to immediately cease all work on the Project and to instruct all subcontractors currently working on the Project to do the same pending receipt of further instruction from Fidelity and/or DHC with respect to resumption or continuation of performance.

Please be advised that further instructions from DHC with respect to termination and winding up of contractor activities at the site will be forthcoming once DHC has received and reviewed Fidelity's Plan for Project completion, for which, as indicated above, the deadline for submission is October 2, 2000. During this interim period, should issues or matters come up which require further discussion, please direct all communications to DHC through the office of DHC's General Counsel, Frank E. Barbee, telephone number (313) 877-8810.

Sincerely,  
DETROIT HOUSING COMMISSION

  
John Nelson, Jr.  
Executive Director

Enclosure

cc. Frank Barbee  
Jill Steen  
Mark Cunningham, Esq.  
David Guest



CITY OF DETROIT  
HOUSING COMMISSION

1301 E. JEFFERSON  
DETROIT, MICHIGAN 48207

September 15, 2000

Via Facsimile to 1-800-329-6112 and U.S. Mail

David Guest  
Fidelity & Deposit Company of Maryland  
Midwest Regional Claim Office  
8888 Keystone Crossing, Suite 610  
Indianapolis, IN 46240

Re: Fidelity & Deposit Company of Maryland ("Fidelity") Claim No. 044-003693  
Detroit Housing Commission ("DHC") Contract #1653  
Jeffries West Apartments, Bldg 502 - Unit Reconfiguration and Renovations (the "Project")  
Principal: A-Mac Sales & Builders Co., Inc. ("A-Mac")

Dear Mr. Guest:

This letter is directed to Fidelity as the Surety which issued Performance and Payment Bond No. 6117787 covering the above referenced Project and is intended to constitute DHC's formal written demand, as contemplated in §14.3 of the DHC General Conditions of the above referenced Contract, that Fidelity perform its obligations under said Bond and proceed to complete the Project.

By letter dated August 21, 2000, copies of which were sent both to you and to Fidelity's counsel of record, Attorney Mark Cunningham, DHC gave A-Mac Notice of Default and Notice of DHC's Intent to Terminate the Contract, absent timely submission of reasonable, credible assurance of Project completion. Please be advised that DHC has received and reviewed A-Mac's "Plan of Assurance" for completion of the Project, presented by letter dated September 7, 2000 from Andrew G. McLemore, Sr., and found it to be unacceptable.

Included among its several deficiencies are the following: it lacks an accounting of specific amounts claimed by subcontractors and suppliers as due and owing for completed work; it fails to provide credible, unqualified commitments from critical subcontractors indicating their willingness to return to work and proceed expeditiously to complete their portions of the work; it does not include "critical path" information to explain the sequencing of subcontractor work so that completion can reasonably occur within the time period projected for completion. Most importantly, A-Mac's "Plan" is not accompanied by anything from Fidelity to indicate its concurrence that the Plan is reasonable or a commitment to see the Project thru to completion.


Mark Cunningham  
September 15, 2000  
Page 2

Enclosed please find a copy of our letter to Mr. McLemore, dated this same date, notifying him of Contract termination for cause. We direct your attention to Paragraph C of Fidelity's Performance Bond for the Project, which expressly references and incorporates Article 14 of the DHC General Conditions as binding on Fidelity. We hereby make demand that Fidelity proceed promptly, in accordance with §14.2.2 of the General Conditions, with performance and prosecution of the work to completion. We look to Fidelity to provide, on or before October 2, 2000, a statement of its intention to do so, along with its written Plan for completion of the Project. See specifically §14.3.1.1 of the General Conditions.

We look forward to receiving and reviewing Fidelity's Plan for completion of the Project. DHC's preference is to work with Fidelity to accomplish what we believe to be in our mutual best interest. Be reminded, however, that should Fidelity fail to timely provide us with an acceptable Plan or fail to proceed promptly to perform its obligations under the Performance Bond, DHC has the right to declare Fidelity in default and reserves the right to assert and pursue any and all rights remedies set forth in the Contract and afforded to DHC as a consequence thereof.

Should issues or matters come up which require further discussion, feel free to call the office of DHC's General Counsel, Frank E. Barbee, telephone number (313) 877-8810, to speak with him or with Attorney Robert Koenig of his staff.

Very truly yours,  
DETROIT HOUSING COMMISSION

  
John Nelson, Jr.  
Executive Director

Enclosure

cc. Frank Barbee  
Jill Steen  
Andrew G. McLemore, Sr.  
Mark Cunningham

JS 44 11/99

2:04-cv-72643-LRZ-RSW Doc # 1

Filed 07/16/04 Pg 22 of 23

LP2/RSW

Wayne

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet.

## I. (a) PLAINTIFFS

Fidelity and Deposit Company of Maryland in its own right  
and as subrogee and assignee of various obligees  
and claimants

## DEFENDANTS

A-Mac Sales and Builders Co., Inc.,  
Andrew G. McLemore and Dorothy McLemore

04-72643

(b) County of Residence of First Listed Plaintiff

Maryland

County of Residence of First Listed Defendant

Wayne County, MI

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE  
LAND INVOLVED

(C) Attorneys (Firm Name, Address, and Telephone Number)

Mark M. Cunningham (P38408)  
KERR, RUSSELL AND WEBER, PLC  
500 Woodward Ave., Ste. 2500  
Detroit, MI 48226  
(313)961-0200

Attorneys (If Known)

LAWRENCE P. ZATKOFF,

MAGISTRATE JUDGE R. STEVEN WHITEN

## II. BASIS OF JURISDICTION (Place An "X" In One Box Only)

- ☐ 1 U.S. Government Plaintiff  
☐ 2 U.S. Government Defendant  
☐ 3 Federal Question (U.S. Government Not a Party)  
☒ 4 Diversity (Indicate Citizenship of Parties in item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place An "X" In One Box For  
(For Diversity Cases Only) and One Box For Defendant)

- PLA DEF  
Citizen of This State ☐ 1 ☐ 1 Incorporated or Principal Place of Business In This State ☐ 4 ☐ 4  
Citizen of Another State ☐ 2 ☐ 2 Incorporated and Principal Place of Business In Another State ☐ 5 ☐ 5  
Citizen or Subject of a Foreign Country ☐ 3 ☐ 3 Foreign Nation ☐ 6 ☐ 6

## IV. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury—Med. Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure Of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS — Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Equipment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>HABEAS CORPUS:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

## V. ORIGIN (Place An "X" In One Box Only)

- ☒ 1 Original Proceeding  
☐ 2 Removed from State Court  
☐ 3 Remanded from Appellate Court  
☐ 4 Reinstated or Reopened  
☐ 5 Transferred from another district (specify)  
☐ 6 Multidistrict Litigation  
☐ 7 Appeal to District Judge from Magistrate Judgment

## VI. CAUSE OF ACTION (Cite The Us Civil Statute Under Which You Are Filing And Write A Brief Statement Of Cause.

Do Not Cite Jurisdictional Statutes Unless Diversity)

28 U.S.C. §1332; Breach of Contract - Indemnity Agreement

## VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23DEMAND  
\$880,000.00CHECK YES only if demanded in complaint:  
JURY DEMAND: ☐ Yes ☒ NoVIII. RELATED CASE(S) (See instructions)  
IF ANY

JUDGE

DOCKET NUMBER

DATE

7/16/04

SIGNATURE OF ATTORNEY OF RECORD

Mark M. Cunningham

PURSUANT TO LOCAL RULE 83.11

1. Is this a case that has been previously dismissed?

☐ Yes

☒ No

If yes, give the following information:

Court: \_\_\_\_\_

Case No.: \_\_\_\_\_

Judge: \_\_\_\_\_

2. Other than stated above, are there any pending or previously discontinued or dismissed companion cases in this or any other court, including state court? (Companion cases are matters in which it appears substantially similar evidence will be offered or the same or related parties are present and the cases arise out of the same transaction or occurrence.)

☐ Yes

☒ No

If yes, give the following information:

Court: \_\_\_\_\_

Case No.: \_\_\_\_\_

Judge: \_\_\_\_\_

Notes : \_\_\_\_\_